

SECTION 5 – LEGAL AUTHORITIES

A. Authorities and Statutes

Idaho Admissions Act of July 3, 1890

Idaho Constitution, Article 9, Sections 7 and 8

[Title 58, Chapter 13](#), Idaho Code, Lake Protection Act

[Title 47, Chapter 7](#), Idaho Code, Mineral Rights in State Lands

[Title 67, Chapter 43](#), Idaho Code, Sections 67-4301 through 67-4806, Preservation of Certain Lakes

[Title 42, Chapter 38](#), Idaho Code, Stream Channel Protection Act

[Title 58, Chapter 12](#), Idaho Code, Public Trust Doctrine

[Title 73, Chapter 1, Idaho Code, Section 73-116](#), Common Law in Force

[Title 58, Chapter 1, Idaho Code, Section 58-104](#), Idaho Land Board - Powers and Duties

[Title 58, Chapter 1, Idaho Code, Section 58-132](#), Extension and Declaration of Powers and Duties of State Board of Land Commissioners

[Title 58, Chapter 6, Idaho Code, Section 58-601](#), Rights of Way for Ditches and Reservoirs

[Title 36, Chapter 16, Idaho Code, Section 36-1601](#), Public Waters – Highways for Recreation

[Title 55, Chapter 27](#), Idaho Code, Floating Homes Residency Act

[IDAPA 20.03.04](#), Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho

[IDAPA 20.03.17](#), Rules Governing Leases on State Owned Submerged Lands and Formerly Submerged Lands

[IDAPA 20.03.09](#), Rules for Easements on State Owned Submerged Lands and Formerly Submerged Lands

B. Case Law

Shively v. Bowlby, 152 U.S. 1, (1894) (State obtained title to lands below ordinary high water mark of navigable bodies of water at statehood).

Illinois Central Railway Co. v. Illinois, 146 U.S. 387 (1892) (State as administrator of trust of beds of navigable bodies of water does not have power to abdicate its role as trustee in favor of private parties).

Scott v. Lattig, 227 U.S. 229, 33 S.Ct. 242 (1913) (Snake River is navigable and state owns the bed).

Callahan v. Price, 26 Idaho 745, 146 P.2d 732 (1915) (Salmon River is navigable, and establishes the idea of the public trust doctrine in Idaho).

Northern Pacific RR Co. v. Hirzel, 29 Idaho 438, 161 P.2d 854 (1916) (Snake and Clearwater Rivers are navigable for title purposes, and “public lands” in article 9, section 8 of the Idaho Constitution does not include the beds of navigable waterways).

Burrus v. Rutledge, 34 Idaho 606, 202 P.2d 1067 (1921) (Public has rights on water despite ownership of lands beneath the water).

Driesbach v. Lynch, 71 Idaho 501, 234 P.2d 446 (1951) (Explains how to determine littoral right lines; Application of Chord Method has same result).

Hayden Lake Protective Association, Inc. v. Dalton Gardens Irrigation District et al, Kootenai County, Judge Spear (1962) (ordinary high water mark of Hayden Lake is 2239 feet above sea level).

West v. Smith, 95 Idaho 550, 511 P.2d 1326 (1973) (Riparian landowners have unobstructed access to the navigable waters along all points of riparian land).

Southern Idaho Fish and Game v. Picabo Livestock, 96 Idaho 360, 528 P.2d 1295 (1974) (Test for navigability for public right of way; Court decision essentially codified in § 36-1601).

Ritter v. Standal, 98 Idaho 446, 566 P.2d 769 (1977) (Authority of State Board of Land Commissioners over navigable waters).

Heckman Ranches, Inc. v. State, 99 Idaho 793, 589 P.2d 540 (1979) (Determining ordinary high water mark, agricultural purposes does not mean grazing).

Kootenai Environmental Alliance, Inc., Appellant v. Panhandle Yacht Club, Inc., 105 Idaho 622, 671 P.2d 1085 (1983) (Public Trust Doctrine).

Idaho Forest Industries, Inc. v. State, 112 Idaho 512, 733 P.2d 733 (1987) (Public trust arises only in land below natural high water mark of navigable waters).

Erickson v. State, 132 Idaho 208, 970 P.2d 1 (1998) (State is the presumed owner of property below the ordinary high water mark, so burden of proof for an adverse claim of ownership is upon the adjacent upland owner).

DuPont v. Land Board, 134 Idaho 618, 7 P.3d 1095 (2000) (Gives meaning to “most unusual circumstances” in Idaho Code 58-1305(a)).

Almgren v. Department, 136 Idaho 180, 30 P.3d 958 (2001) (Returning applications constitutes an action by the Department).

Idaho v. United States, 533 U.S. 262, 121 S.Ct. 2135 U.S. (2001) (Coeur d’Alene tribe owns the lower one-third of Lake Coeur d’Alene and the St. Joe River inside the reservation

boundaries).

Lovitt v. Robideaux, 139 Idaho 322, 78 P.3d 389 (2003) (Department, based on experience and expertise, is in best position to determine proper placement of docks and whether dock infringes on littoral rights; Department cannot stay decisions).

City of Coeur d'Alene v. Lake Coeur d'Alene Property Owners Association et al, 143 Idaho 443, 147 P.3d 75 (2006) (Elevation of Lake Coeur d'Alene is no higher than 2128 at all points on the lake).

C. Land Board Directives

State Land Board Policy – Float homes – [June 20, 1977](#), and amended [May 18, 1981](#)

State Land Board Policy – Submerged Lands Leasing Rental Rates – [November 19, 1997](#)

State Land Board Policy – Marina Maintenance and Float Home Moorage Rate Policy – [July 6, 1999](#)

State Land Board Policy – Ship's Store Rental Rates – [March 14, 2000](#)

State Land Board Policy – Lease Terms for Float Homes in Marinas and Moorage Rate Policy – [February 13, 2007](#)

State Land Board Policy – Lease Terms for Float Homes in Marinas and Definition of Reasonable Moorage Rate – [June 12, 2007](#)

State Land Board Policy – Rules Committee Report ([Attachment 28](#))

D. Interagency Agreements

Memorandum of Understanding, Idaho Department of Water Resources and Idaho Department of Lands ([Attachment 27](#))